

COPY

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

FIRST JUDICIAL DISTRICT COURT

RIO GRANDE SUN and LOUIS MATTEI,
individually and as a reporter for the Rio Grande
Sun,

Plaintiffs,

vs.

BOARD OF REGENTS OF NORTHERN NEW
MEXICO COLLEGE, a body corporate of the
State of New Mexico, for its operation and control
of NORTHERN NEW MEXICO COLLEGE, and
MITCHEL STANFIELD, in his official capacity
as custodian of the public records of Northern New
Mexico College,

Defendants.

ENDORSED
First Judicial District Court

JUL 29 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2255
Santa Fe, NM 87304-2255

No. CV D117CV201000327

**COMPLAINT FOR PRODUCTION OF PUBLIC RECORDS, FOR MANDAMUS, FOR
DAMAGES, AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs *Rio Grande Sun* ("Sun") and Louis Mattei, by and through their undersigned
counsel, state:

NATURE OF THE CASE

1. This action is brought pursuant to the New Mexico Inspection of Public Records
Act, NMSA 1978, Section 14-2-1 to -12 ("IPRA"), and seeks to compel the production of public
records maintained by Northern New Mexico College ("NNMC") regarding its operations and
expenditures of public funds.

2. NNMC has repeatedly and historically refused to respond to the *Sun*'s formal requests for public records. Indeed, on information and belief, it has become standard practice at NNMC to ignore requests on the grounds that the public college is supposedly too busy to bother responding to requests to inspect public records by the local newspaper or to produce documents responsive to those requests. NNMC's practice of ignoring records requests is in direct violation of IPRA's mandate that the production of public records in response to a request is "an essential function of a representative government and an integral part of the routine duties of public officers and employees." See NMSA 1978, § 14-2-5.

3. NNMC's practice of ignoring IPRA requests is not only in direct contravention of IPRA, but its own formal public records policy, which states that "Records in Northern's possession are to be made available to public inspection, except where a lawful exemption exists." See Northern New Mexico College Administrative Policy, Records Management (November 13, 1992), attached hereto as Exhibit A.

4. NNMC's continued and blatant violations of IPRA justify not only present relief but also a prospective remedy that compels NNMC to comply with IPRA's requirements whenever it receives a public records request from Plaintiffs, and to change its IPRA practices so that they comport with both the law and NNMC's stated public records policy.

PARTIES, JURISDICTION, AND VENUE

5. Plaintiff *Sun* is a newspaper of limited and general circulation in New Mexico, covering mainly Santa Fe, Los Alamos, and Rio Arriba counties and the communities within those counties. The *Sun*'s offices are located in Española, New Mexico.

6. Plaintiff Louis Mattei is a reporter with the *Sun*. In this capacity, he covers public and higher education matters within the *Sun*'s area of coverage.

7. Defendant NNMC is a New Mexico state institution of higher learning created and operating pursuant to state law, specifically NMSA 1978, § 21-4-1 to -3 (2005). As a state institution, NNMC is subject to the requirements of the IPRA.

8. Defendant Board of Regents is a body corporate of the State of New Mexico vested with the authority to manage and control NNMC, including the power to be sued on behalf of NNMC. See N.M. Const. Art. 12, § 13; NMSA 1978, § 21-4-1 (2005). Like NNMC, the Board of Regents is subject to the IPRA and other state laws mandating that citizens be afforded full access to its records. See NMSA 1978, §§ 14-2-5; 21-1-16 (1953).

9. Defendant Mitchel Stanfield is the Director of Public Affairs of NNMC. As part of his official duties, Mr. Stanfield has been designated and serves as the custodian of public records possessed, maintained or controlled by NNMC. See www.nnmc.edu/about/public_relations. On information and belief, Mr. Stanfield also serves as the custodian of records for Defendant Board of Regents.

10. Jurisdiction and venue are proper pursuant to the IPRA, NMSA 1978, Section 14-2-1 to -12 and the venue statute, NMSA 1978, Section 38-3-1 (1988).

11. There exists an actual controversy between the parties regarding the Defendants' duties under the IPRA. Accordingly, an action for declaratory relief is authorized under NMSA 1978, Sections 44-6-2 and 44-6-4.

FACTUAL ALLEGATIONS

12. As part of his newsgathering and reporting on education matters within the *Sun's* circulation area, Mr. Mattei routinely employs IPRA requests to obtain information from local schools and colleges. In the Winter of 2009, Mr. Mattei began investigating the public finances of NNMC, school expenditures related to various capital projects, the recruitment of a new college president, and internal and external communications between the regents, college staff, and contractors regarding these and other public issues. He therefore tendered a series of written IPRA requests seeking to inspect documents related to these issues, but, in many cases, Defendants ignored his requests as explained below.

The January 20 Request for Accounts Payable Information

13. On January 20, 2010, Mr. Mattei tendered a written request to Mr. Stanfield to inspect the "list of the college's accounts payable for the month of December 2009." A copy of this request is attached as Exhibit B.

14. NNMC failed to respond to the January 20, 2010 request within the deadlines imposed by IPRA.

15. To date, NNMC has failed to respond in writing to the January 20, 2010 request.

The February 24 Requests for Pay Voucher, Bank Account and Credit Card Information

16. On February 24, 2010, Mr. Mattei tendered a written request to Mr. Stanfield to inspect the following public records:

- a. "All pay vouchers issued from the college during the month of February 2010, including but not limited to all pay vouchers for all expenses related to presidential

finalist visits[;]"

b. "Statements from any and all bank and/or investment accounts overseen by the college, fiscal year 2009 to present[;]" and

c. "Statements from and [sic] and all college-issued credit or debit cards, fiscal year 2009 to present."

A copy of Mr. Mattei's requests is attached as Exhibit C.

17. NNMC failed to respond to these requests within the deadlines imposed by IPRA.

18. To date, NNMC has failed to respond in writing to the February 24, 2010 requests.

The May 28 Request for Emails between NNMC and Arcadis

19. On May 28, 2010, Mr. Mattei tendered a written request to Mr. Stanfield to inspect "all emails and other correspondence between any college personnel and any representative from Arcadis in fiscal year 2010." A copy of this request is attached as Exhibit D.

20. NNMC failed to respond to the May 28, 2010 request within the deadlines imposed by IPRA.

21. To date, NNMC has failed to respond in writing to the May 28, 2010 request.

THE INSPECTION OF PUBLIC RECORDS ACT

22. The IPRA broadly defines the records to which the public and the press are entitled to access: "all documents, papers, letters, books . . . and other materials . . . that are used, created, received, maintained or held by or on behalf of any public body and relate to public business . . .", NMSA 1978, § 14-2-6(E).

23. Further, it is the

public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

NMSA 1978, § 14-2-5. Thus, under IPRA, citizens and the news media have "a fundamental right to have access to public records" and "[t]he citizen's right to know is the rule and secrecy is the exception." *See State ex rel. Newsome v. Alarid*, 90 N.M. 790, 797, 568 P.2d 1236, 1243 (1977).

24. The IPRA requires a custodian of records who denies a written request to provide the requester with a written explanation of the denial. The written explanation must provide the reason for the denial and also describe the records sought, and set forth the names and titles or positions of each person responsible for the denial. *See* NMSA 1978, § 14-2-11(B). The custodian must deliver the denial with this information within fifteen (15) days after the request is received. *See id.*

25. The right to inspect public documents is limited by only a few exceptions stated in Section 14-2-1.

COUNT ONE

Violations of the Inspection of Public Records Act

26. The Plaintiffs incorporate by reference the foregoing allegations.

27. The Defendants have violated the IPRA in the following ways:

- a. The Defendants failed to produce the documents requested by the Plaintiffs as required by IPRA;
- b. The Defendants failed to respond to IPRA requests submitted by the

Plaintiffs within the time limits imposed by IPRA;

c. By failing to respond, the Defendants failed to provide Plaintiffs complete written explanations of the reasons for denying the requests, including the names and titles or positions of each person responsible for the denial and the specific reasons for the denial, within the time limits imposed by IPRA; and

d. The Defendants have failed to offer any valid grounds under Section 14-2-1 for refusing to produce the records requested by the Plaintiffs as is required by the IPRA.

28. By ignoring Plaintiffs' IPRA requests and by refusing to disclose the documents requested, Defendants are attempting to keep secret matters of public concern. Defendants' failure to respond to and produce documents responsive to the Plaintiffs' public records requests are in direct violation of their obligation to disclose such information under the IPRA. Further, Defendants' actions have harmed Plaintiffs by impeding their ability to accurately and fully report on matters of public concern in ways that cannot be readily calculated.

29. The Plaintiffs are entitled to recover damages, at up to \$100 per day per violation, and their costs and attorneys' fees in pursuing this action pursuant to Section 14-2-12(D).

COUNT TWO

Declaratory Relief

30. The Plaintiffs incorporate by reference the foregoing allegations.

31. There exists an actual controversy between the Plaintiffs and the Defendants whether the Defendants' conduct, as alleged above, constitutes violations of the IPRA and whether

the documents requested by the Plaintiffs constitute public records that Defendants are required by law to disclose.

32. Plaintiffs are entitled to declaratory relief that Defendants have violated the IPRA, and that the documents requested by Plaintiffs are public records under the IPRA.

COUNT THREE

Injunctive Relief and Mandamus

33. The Plaintiffs incorporate by reference the foregoing allegations.

34. In the instances cited above and in other instances, the Defendants have repeatedly and consistently demonstrated a deliberate and conscious refusal to comply with their obligations under the IPRA, justifying this Court's consideration of injunctive relief to prevent violations of the IPRA in the future.

35. Pursuant to NMSA 1978, Section 14-2-12(B), the Plaintiffs are entitled to a writ of mandamus or injunction ordering the Defendants to produce all relevant documents in the Defendants' possession that are responsive to Plaintiffs' requests.

WHEREFORE, the Plaintiffs pray that:

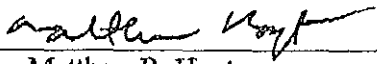
1. the Court declare that the Defendants have violated IPRA with regard to the Plaintiffs' records requests;
2. the Court issue a writ of mandamus or injunction ordering the Defendants to produce the records and information requested without further delay;
3. the Court issue a writ of mandamus or injunction ordering Defendants to timely and fully respond to all future IPRA requests by Plaintiffs, produce all documents similar to those

presently at issue in the future, and to adopt policies and procedures and training sufficient to correct the policies and practices that have resulted in the Defendants' multiple violations of the IPRA in this case; and

4. the Court enter an order for such other and further relief as the Court deems just and proper, including but not limited to an award of the Plaintiffs' damages, costs and reasonable attorneys' fees.

Respectfully submitted,

PEIFER, HANSON & MULLINS, P.A.

By: 
Matthew R. Hoyt
Attorneys for Plaintiffs
Post Office Box 25245
Albuquerque, New Mexico 87125
Telephone: (505) 247-4800
Facsimile: (505) 243-6458

**Northern New Mexico College
ADMINISTRATIVE POLICY**

Subject: Records Management

File Reference: 17

Date Approved: November 13, 1992

By Board of Regents:

Replaces Policy Approved On:

Purpose: The purpose of this policy is to establish a college-wide records management program and to implement standardized practice for the control and maintenance of College records.

Policy: The Board of Regents of Northern New Mexico Community College hereby establish a policy for the handling of records by all departments by the most orderly, efficient and cost effective means. To accomplish this a Records Management Program is established. The Chief Finance Officer will be charged with developing and maintaining procedures to standardize records management practices of the College. This effort will assure that all departments are in compliance with applicable State and Federal laws, rules, and regulations governing record keeping requirements, accessibility and safekeeping. Procedures are subject to approval by the President of the College.

Applicability

This policy applies to all programs of the College, including Federal and State programs administered by Northern. Exceptions to this policy must have the written approval of the President.

Definitions

Records Management – The effective administration and control of records from the time of creation origination to storage, use, transfer and/or disposition.

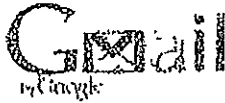
Records – Written accounts of a formal group's proceedings, transactions or workflow which are generated by the organization's continued operation. In particular, documents which provide public accountability.

Access to Public Records – Records in Northern's possession are to be made available to public inspection, except where a lawful exemption exists. (Article 2, Section 14-2-1 through 14-2-3 NMSA 1972.)

Retention and Disposition Schedules – A listing of standards prepared by the New Mexico Commission of Public Records as created by an act of the Legislature of New Mexico. The Act may be cited as the "Public Records Act" (Article 3, Sections 14-3-1 through 14-3-25 NMSA 1978).

Procedures:





Louie Mattei <louis.e.mattei@gmail.com>

Inspection of public records request

1 message

Lou Mattei <louis.e.mattei@gmail.com>
To: mstanfield@nnmo.edu

Wed, Jan 20, 2010 at 3:31 PM

Jan, 20, 2010

To: Mitchel Stanfield
Director of Public Affairs
Northern New Mexico College
921 Paseo de Oñate
Española, NM 87532

From: Lou Mattei
Staff Writer
Rio Grande SUN
PO Box 790
Española, NM 87532

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect the following documents:

- Full packet from the Board of Regents 1/21/10 meeting
- NR - List of the college's accounts payable for the month of December 2009
- College's audit from fiscal year 2009
- All pay vouchers and architectural plans related to the construction of the Teacher Education Building, 2009 to present

The following is a list of requests I have submitted to the college that have not been fulfilled or denied, though it is well past the time lines provided in the Act:

- NR - Correspondence between any and all Board members and David Trujillo, July 2009 to present (Sept. 3, 2009)
- NR - All financial records, including but not limited to pay vouchers, transaction records and bank statements, associated with the college's Enterprise Bank Account(s), fiscal year 2007 to present (Nov. 25, 2009)
- NR - All e-mails between David Trujillo and Andres Salazar, July 2009 to present (Nov. 25, 2009)
- Complete working budget for fiscal year 2010 (Nov. 25, 2009)
- All documents (financial records, bids, architectural plans, etc.) related to the Ben Lujan Learning Center

EXHIBIT
B

expansion, fiscal year 2007 to present (Nov. 25, 2009)

NR - Personnel file for Andres Salazar (Sept. 7, 2009)

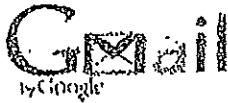
I would be happy to provide copies of these original requests, if needed, and would ask that these requests be either fulfilled or denied as required by law as soon as possible.

I prefer to receive records electronically, and would be happy to provide a computer disk or USB drive for copying. If records can be e-mailed, please forward them to louis.c.mattei@gmail.com.

Please feel free to contact me with any questions and to schedule an appointment when the documents are available for inspection. Thank you.

Sincerely,

Lou Mattei



Louis Mattel <louis.c.mattel@gmail.com>

Inspection of public records request 2/24/10

1 message

Lou Mattel <louis.c.mattel@gmail.com>
To: Mitch Stanfield <mstanfield@nnmc.edu>

Wed, Feb 24, 2010 at 10:11 AM

Feb. 24, 2010

To: Mitch Stanfield
Public Records Custodian
Northern New Mexico College

From: Lou Mattel
Staff Writer
Rio Grande SUN

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect the following documents:

- NR - All pay vouchers issued from the college during the month of February 2010, including but not limited to all pay vouchers for all expenses related to presidential finalist visits.
- NR - Statements from any and all bank and/or investment accounts overseen by the college, fiscal year 2009 to present.
- NR - Statements from any and all college-issued credit or debit cards, fiscal year 2009 to present.
- NR - Any and all contracts with David Trujillo, Andres Salazar, the Association of Community College Trustees and Amy Horowitz, fiscal year 2009 to present.

I prefer to receive records electronically, and would be happy to provide a computer disk or USB drive for copying. If records can be e-mailed, please forward them to louis.c.mattel@gmail.com.

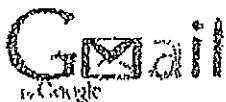
Please feel free to contact me with any questions and to schedule an appointment when the documents are available for inspection. Thank you.

Sincerely,

Lou Mattel

Rio Grande SUN
PO Box 790
Española, NM 87532

EXHIBIT
C



Louis Mattel <louis.c.mattel@gmail.com>

Inspection of public records request

1 message

Lou Mattel <louis.c.mattel@gmail.com>
To: Mitchel Stanfield <mstanfield@nnmc.edu>

Fri, May 28, 2010 at 8:23 AM

May 28, 2010

To: Mitch Stanfield
Public Records Custodian
Northern New Mexico College

From: Lou Mattel
Staff Writer
Rio Grande SUN

This is a formal request under the New Mexico Inspection of Public Records Act. I wish to inspect the following documents:

- NR - Any and all contracts with Arcadis in fiscal year 2010.
- NR - The final Arcadis report on the company's dorm project feasibility study conducted in fiscal year 2010 and presented to the Board of Regents May 20, 2010.
- NR - All e-mails and other correspondence between any college personnel and any representative from Arcadis in fiscal year 2010.

I prefer to receive records electronically, and would be happy to provide a computer disk or USB drive for copying. If records can be e-mailed, please forward them to louis.c.mattel@gmail.com.

Please feel free to contact me with any questions and to schedule an appointment when the documents are available for inspection. Thank you.

Sincerely,

Lou Mattel

Rio Grande SUN
P.O. Box 780
Española, NM 87532

office: 505-753-2126
cell: 505-614-6968

EXHIBIT**D**